

**CITY OF LA VISTA
PLANNING DIVISION**

RECOMMENDATION REPORT

CASE NUMBER: FOR HEARING OF: November 20, 2008
Report Prepared on November 11, 2008

I. GENERAL INFORMATION

- A. APPLICANT:** Beyond Golf, LLC; Josh Galvin
- B. PROPERTY OWNER:** John Hoich
- C. LOCATION:** 12040 McDermott Plaza, Suite 330
- D. LEGAL DESCRIPTION:** Lot 4-5, Southport East Replat 6
- E. REQUESTED ACTION(S):** Approval of a Conditional Use Permit to allow a tavern / bar (to be named Beyond Golf)
- F. EXISTING ZONING AND LAND USE:**
C-3, Highway Commercial / Office Park District and Gateway Corridor District. This property is the site of Southport Center, which was designed for commercial retail flex space.
- G. PURPOSE OF REQUEST:** The proposal is to construct a tavern (to be named Beyond Golf) inside of a newly constructed commercial flex building. Also, a portion of the sidewalk is proposed as an outside beer garden.
- H. SIZE OF SITE:** Approx. 3,693 square feet of the building is proposed for the tavern, plus an additional 375 sq. feet for the outdoor beer garden. The lots total approximately 5.8 acres.

II. BACKGROUND INFORMATION

- A. EXISTING CONDITION OF SITE:** Southport Center is under construction with the intent of commercial retail flex space.
- B. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:**
 - 1. North:** C-3, Vacant
 - 2. East:** TA, Sod Farm
 - 3. South:** C-3, Runza®
 - 4. West:** C-3, Hampton Inn

- C. **RELEVANT CASE HISTORY:** This lot was re-platted as a part of Southport East Replat 6; architectural design review approval was previously completed for Southport Center.
- D. **APPLICABLE REGULATIONS:**
 - 1. Section 5.12, Zoning Ordinance, regarding C-3 Zoning District
 - 2. Section 5.17, Zoning Ordinance, regarding Gateway Corridor Dist.
 - 3. Section 6.05, Zoning Ordinance, CUP Standards for Approval
 - 4. Southport Architectural and Site Design Guidelines

III. ANALYSIS

- A. **COMPREHENSIVE PLAN:** The Future Land Use Map of the Comprehensive Plan designates this property for commercial uses in the gateway corridor.
- B. **OTHER PLANS:** The Southport Center landscape plan and architectural design review were finalized and approved in 2007.
- C. **TRAFFIC AND ACCESS:**
 - 1. Ingress / egress will be provided via McDermott Plaza.
 - 2. The applicant did not provide number of proposed parking spaces; however, the City Engineer has calculated that 46 parking spaces would be required by code for the proposed tavern. Sufficient parking exists for this proposed use at this time. However, a request has been made to the owners to provide a plan for additional parking spaces if too many bars and restaurants are demanding parking at Southport Center.
 - 3. Pedestrian sidewalks are provided at the perimeter of this site. Interior walking paths are also provided to the tenant bays. The outdoor patio area / beer garden is proposed on the west side of the building in a pedestrian commons area.
- D. **UTILITIES:** All utilities are available to the site.

IV. REVIEW COMMENTS:

- 1. The site plan for Southport Center shows 188 parking spaces total to be divided among the all the commercial retail tenants. The original Planned Unit Development dedicated 16.6 parking spaces for this tenant bay. However, the zoning code requires 46 parking spaces for this use. The proposed use will therefore go over the budgeted number of parking spaces, which may cause overflow parking affecting other businesses.
- 2. Both the Fire Chief and the Police Chief have reviewed the proposal and have no concerns at this time.
- 3. The outdoor patio area shall not be allowed to obstruct pedestrian walkways.

V. PLANNING STAFF RECOMMENDATION:

The Planning Staff recommends approval of the Conditional Use Permit to allow Beyond Golf in the C-3 zoning district with the following conditions:

1. The applicant shall demonstrate they can provide the necessary number of parking spaces for the tavern without negatively impacting the parking required for future tenants on this lot.
2. Additional on-site parking spaces may be required by the City if additional bars, taverns, or restaurants are planned in the same building as Houston's Lounge. In which case, the owner shall be responsible for constructing additional parking spaces.
3. The outdoor patio must have a perimeter fence constructed to a height and style approved by the City of La Vista.
4. The outdoor patio shall not obstruct the pedestrian commons area in a way that would impede pedestrian traffic.

VI. ATTACHMENTS TO REPORT:

1. Vicinity Map
2. City Engineer's Report
3. Draft Conditional Use Permit with Exhibit "A"

VII. COPIES OF REPORT SENT TO:

1. Josh Galvin, Applicant
2. John Hoich, Owner
3. Public Upon Request

Prepared by:

Community Development Director

Date

**City of La Vista
Conditional Use Permit**

Conditional Use Permit for a Tavern / Bar

This Conditional Use Permit issued this 2nd day of December, 2008, by the City of La Vista, a municipal corporation in the County of Sarpy County, Nebraska ("City") to, Southport Center, LLC ("Owner"), pursuant to the La Vista Zoning Ordinance.

WHEREAS, Owner wishes to construct and operate a tavern / bar upon the following described tract of land within the City of La Vista zoning jurisdiction:

Lot 4 of Southport East Replat 6, located in the SE ¼ of Section 18, Township 14 North, Range 12 East of the 6th P.M. Sarpy County, Nebraska.

WHEREAS, Owner has applied for a conditional use permit for the purpose of locating and operating a tavern and cocktail lounge; and

WHEREAS, the Mayor and City Council of the City of La Vista are agreeable to the issuance of a conditional use permit to the owner for such purposes, subject to certain conditions and agreements as hereinafter provided.

NOW, THEREFORE, BE IT KNOWN THAT subject to the conditions hereof, this conditional use permit is issued to the owner to use the premises designated on Exhibit "A" hereto for a tavern and cocktail lounge, said use hereinafter being referred to as "Permitted Use or Use".

Conditions of Permit

The conditions to which the granting of this permit is subject are:

1. The rights granted by this permit are transferable and any variation or breach of any terms hereof shall cause permit to expire and terminate without the prior written consent of the City (amendment to permit) or unless exempted herein.
2. In respect to the proposed Use:
 - a. A site plan showing the property boundaries of the tract of land and easements, proposed structures, parking, access points, and drives shall be provided to the City and attached to the permit as Exhibit "A".
 - b. Hours of operation for the use will be from 7:00 a.m. – 1:00 a.m., weekdays and weekends.
 - c. There will be a maximum of five (5) employees working at any given time at the tavern.
 - d. The use will be comprised of 3,693 sq. feet of building space and 375 sq. feet of outdoor patio space.
 - e. Off-street parking shall be provided for the Permitted Use and the number of parking spaces shall be adequate, as determined by the City, to accommodate the patrons and guests of the Permitted Use without negatively impacting or limiting the number of parking spaces for other existing or future tenants. The Permitted Use is required to have a minimum of 46 spaces, per the Zoning Ordinance.
 - f. Additional off-street parking spaces may be required by the City if additional bars, taverns or restaurants are planned in the same building as the Permitted Use. In which case, the owner shall be responsible for constructing additional parking spaces. T
 - g. The premises shall be developed and maintained in accordance with the site plan (Exhibit "A") as

approved by the City and incorporated herein by this reference. Any modifications must be submitted to the Chief Building Official for approval.

- h. There shall be no storage, placement or display of goods, supplies or any other material, substance, container or receptacle outside of the facility, except trash receptacles per Appendix P: Site Furnishings in the Southport East Design Guidelines and those approved in writing by the City.
- i. There shall not be any outside storage of materials. All trash receptacles, benches and planters, as permitted by the Southport East Design Guidelines, shall be placed on property and securely fastened to building or concrete.
- j. Owner shall obtain all required permits from the City of La Vista and shall comply with any additional requirements as determined by the Chief Building Official, including, but not limited to, building, fire, ADA and FAA.
- k. Owner shall comply (and shall ensure that all employees, invitees, suppliers, structures, appurtenances and improvements, and all activities occurring or conducted, on the premises at any time comply) with any applicable federal, state and/or local regulations, as amended or in effect from time to time, including, but not limited to, applicable environmental or safety laws, rules or regulations.

- l. Owner hereby indemnifies the City against, and holds the City harmless from, any liability, loss, claim or expense whatsoever (including, but not limited to, reasonable attorney fees and court cost) arising out of or resulting from the acts, omissions or negligence of the owner, his agents, employees, assigns, suppliers or invitees, including, but not limited to, any liability, loss, claim or expense arising out of or resulting from any violation on the premises of any environmental or safety law, rule or regulation.

- 3. The applicant's right to maintain the use as approved pursuant to these provisions shall be based on the following:
 - a. An annual inspection to determine compliance with the conditions of approval. The conditional use permit may be revoked upon a finding by the City that there is a violation of the terms of approval, if the violation continues after written notice from the City to Owner and a reasonable time was given for Owner to cure such violation.
- 4. In respect to the Gateway Corridor Overlay District and Southport East Design Guidelines:
(All design guidelines were approved with the construction of the Southport Center building.)
- 5. The applicant's right to maintain the use as approved pursuant to these provisions shall be based on the following:
 - a. An annual inspection to determine compliance with the conditions of approval. The conditional use permit may be revoked upon a finding by the City that there is a violation of the terms of approval.
 - b. The use authorized by the conditional use permit must be initiated within one (1) year of approval and shall become void two (2) years after the date of approval unless the applicant has fully complied with the terms of approval.
 - c. All obsolete or unused structures, accessory facilities or materials with an environmental or safety hazard shall be abated and/or removed at owner's expense within twelve (12) months of cessation of the conditional use.
- 6. Notwithstanding any other provision herein to the contrary, this permit, and all rights granted hereby, shall expire and terminate as to a permitted use hereunder upon the first of the following to occur:
 - a. Owner's abandonment of the permitted use. Non-use thereof for a period of twelve (12) months shall constitute a presumption of abandonment.
 - b. Cancellation, revocation, denial or failure to maintain any federal, state or local permit required for the Use.
 - c. Owner's construction or placement of a storage tank, structure or other improvement on the premises not specified in this permit.

- d. Owner's breach of any other terms hereof and his failure to correct such breach within ten (10) days of City's giving notice thereof.
- 7. If the permitted use is not commenced within one (1) year from **December 2, 2008**, this Permit shall be null and void and all rights hereunder shall lapse, without prejudice to owner's right to file for an extension of time pursuant to the La Vista Zoning Ordinance.
- 8. In the event of the owner's failure to promptly remove any safety or environmental hazard from the premises, or the expiration or termination of this permit and the owner's failure to promptly remove any permitted materials or any remaining environmental or safety hazard, the City may, at its option (but without any obligation to the owner or any third party to exercise said option) cause the same to be removed at owner's cost (including, but not limited to, the cost of any excavation and earthwork that is necessary or advisable) and the owner shall reimburse the City the costs incurred to remove the same. Owner hereby irrevocably grants the City, its agents and employees the right to enter the premises and to take whatever action as is necessary or appropriate to remove the structures or any environmental or safety hazards in accordance with the terms of this permit, and the right of the City to enter the premises as necessary or appropriate to carry out any other provision of this permit.
- 9. If any provision, or any portion thereof, contained in this agreement is held to be unconstitutional, invalid, or unenforceable, the remaining provisions hereof, or portions thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

Miscellaneous

The conditions and terms of this permit shall be binding upon owner, his successors and assigns.

- 1. Delay of City to terminate this permit on account of breach of owner of any of the terms hereof shall not constitute a waiver of City's right to terminate, unless it shall have expressly waived said breach and a waiver of the right to terminate upon any breach shall not constitute a waiver of the right to terminate upon a subsequent breach of the terms hereof, whether said breach be of the same or different nature.
- 2. Nothing herein shall be construed to be a waiver or suspension of, or an agreement on the part of the City to waive or suspend, any zoning law or regulation applicable to the premises except to the extent and for the duration specifically authorized by this permit.
- 3. Any notice to be given by City hereunder shall be in writing and shall be sufficiently given if sent by regular mail, postage prepaid, addressed to the owner as follows:

Contact Name and Address: John Hoich
Southport Center, LLC.
780 N 114th Street
Omaha, NE 68514
(402) 697- 8899

Effective Date:

This permit shall take effect upon the filing hereof with the City Clerk a signed original hereof.

THE CITY OF LA VISTA

By _____
Douglas Kindig, Mayor

Attest:

Pamela A Buethe, CMC
Deputy City Clerk

CONSENT AND AGREEMENT

The undersigned does hereby consent and agree to the conditions of this permit and that the terms hereof constitute an agreement on the part of the undersigned to fully and timely perform each and every condition and term hereof, and the undersigned does hereby warrant, covenant and agree to fully and timely perform and discharge all obligations and liabilities herein required by owner to be performed or discharged.

Owner: _____

By: _____

Title: _____

Date: _____



BEYOND GOLF

SPORTS SPIRITS

Beyond Golf will revolutionize the way one perceives the typical sports bar. We take "watching sports" to the next level, actually playing! Beyond Golf is an interactive sports bar with High Definition Golf as its focal point. HD Golf's revolutionary image processing software utilizes high resolution digital images to create life-like "skins" and Geophysical Information Systems (GIS) to replicate accurate terrain and elevation data. The proprietary process creates a true 3D model of entire golf courses that not only looks real, but is completely accurate. Every tree, bunker, and hazard is faithfully reproduced exactly as one would see it when playing the actual golf course¹. This offers guests more fun and involvement during their leisure time.

The main objectives of the development of this business are:

- Capitalize on a strong golf community in an area with extreme weather conditions.
- To launch the venue with a highly publicized grand opening event in the fall of 2008.
- To sustain firm control of costs, operations, and cash flow through diligent management and automated computer systems.
- To maintain a total beverage cost below 25% of beverage revenue.
- Expansion through adding more simulators, locations, and franchise opportunities.

The keys to success in achieving our goals are:

- Provide outstanding customer service that leaves an impression.
- Consistent country club atmosphere and product quality.
- Managing our internal finances and cash flow to enable upward capital growth.
- Strict control of all costs, at all times, without exception.

¹ Interactive Sports Technologies – www.istgolf.com



Mr. Jeff Sinnett
Building Inspector
City of La Vista

Mr. Sinnett,

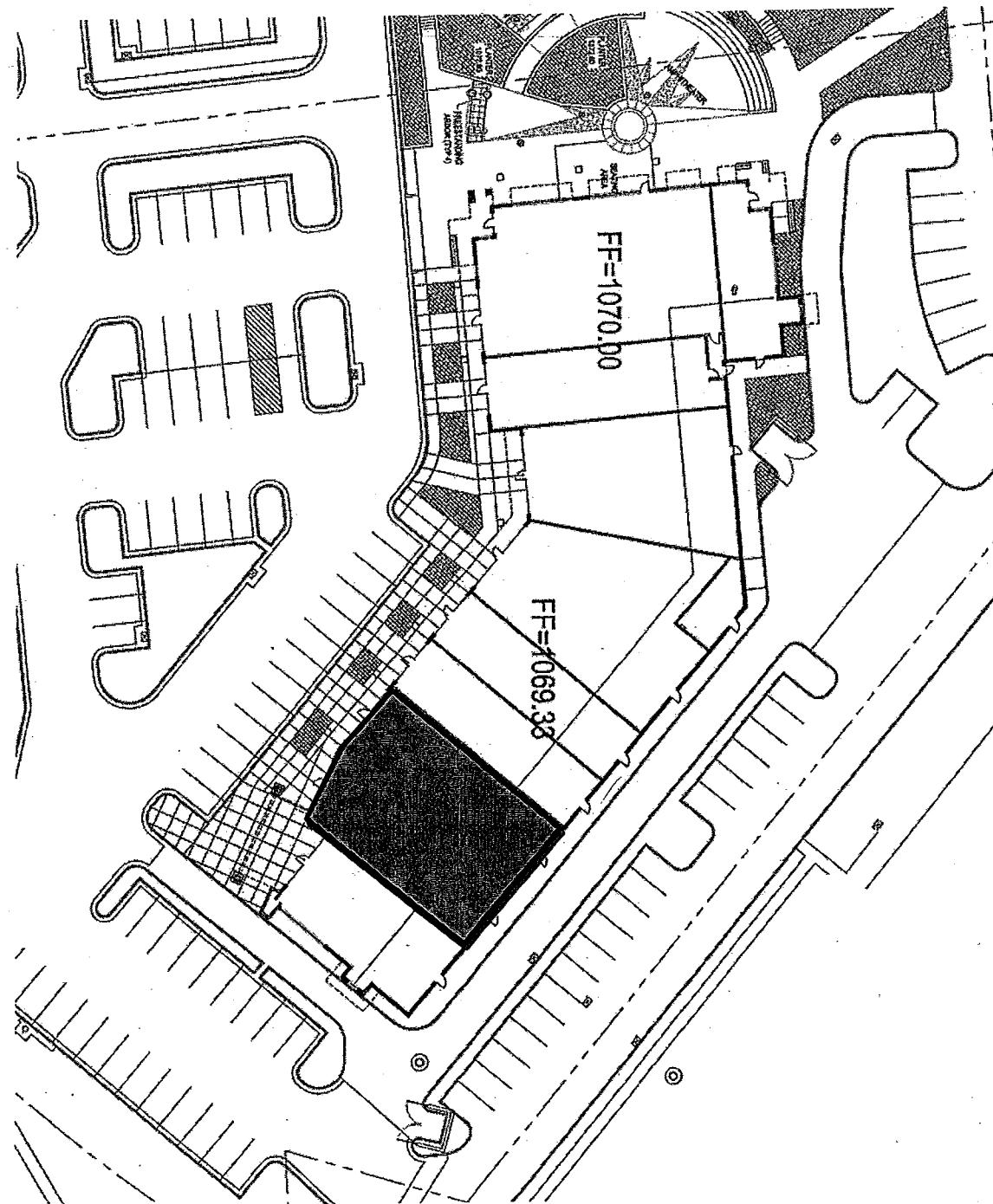
Beyond Golf LLC estimates an average of 60% golf simulator sales and 40% liquor and beverage sales for our location at 12040 McDermott Plaza, Suite 330, La Vista, NE.

Sincerely,

A handwritten signature in black ink, appearing to read 'Josh Galvin'.

Josh Galvin, Member
Beyond Golf LLC

EXHIBIT "A"
THE PREMISES





THOMPSON, DREESSEN & DORNER, INC.
Consulting Engineers & Land Surveyors

November 6, 2008

Mr. Marcus Baker
City Planner
City of La Vista
8116 Park View Boulevard
La Vista, NE 68128

ROBERT E. DREESSEN, P.E.
NELSON J. HYMANS, P.E.
JAMES D. WARNER, L.S.
CHARLES E. RIGGS, P.E.
KA "KID" P. SQUIRE III, P.E., S.E.
JOHN M. KOTTMANN, P.E.
ARTHUR D. BECCARD, P.E.
DOUGLAS S. DREESSEN, P.E.
DEAN A. JAEGER, P.E.
RICHARD M. BROYLES, L.S.
DAVID H. NEEF, L.S.
RONALD M. KOENIG, L.S.
CHRIS E. DORNER, L.S.

TIMOTHY T. PAPSTEIN, P.E.
MICHAEL J. SMITH, L.S.
TROY J. NISSEN, P.E., S.E.
DOUGLAS E. KELLNER, P.E.
GARY A. NORTON, P.E.
BRIAN L. LODES, P.E.
KURTIS L. ROHN, P.E.
JEFFREY L. THOMPSON, P.E.
DAREN A. KONDA, P.E.
MICHAEL T. CANIGLIA, L.S.
JEREMY T. STEENHOEK, P.E.
JOSHUA J. STORM, P.E.

RE: Rezoning & Conditional Use Permit Reviews 2008
Lots 4 & 5, Southport East Replat Six-12040 McDermott Plaza
Proposed Conditional Use Permit for Beyond Golf
TD² File No. 171-357.7

Marcus:

I have reviewed the application and supporting information that were received in this office on October 30, 2008 for a proposed conditional use permit for the above-referenced use permit. The application indicates that 60% of sales will be for golf simulator sales and 40% will be for beverage sales. Additional information provided by the applicant indicates that the permit would apply to 3,693 square feet of the proposed 43,357 square feet of building space proposed on these two lots. There is also a proposed outdoor seating area of 375 square feet. The applicant also indicates that there would be seating for approximately 100 persons inside and 25 persons outside. If one treats this use as a "recreational facility" then the code required parking would be 31.25 stalls. If one treats this use a "tavern" then the code required parking would be 45.68, assuming the maximum number of employees would be 5. This site is part of a PUD that included an overall parking requirement based on 4.5 stalls per 1,000 square feet of gross leasable floor area. For 3,693 square feet, this would be 16.62 stalls. At the time the PUD was approved, specific uses were not known and the overall ratio of parking was based on the assumption of a mix of uses with offsetting peak periods. So far, the tenant spaces being utilized in the first portion of this project have all been of a similar nature for food and drink and a recreation component. It is apparent that if the entire facility is occupied with food and drink uses, then parking will not be adequate. At this point, there is adequate parking to support this proposed use along with the others considered so far, so I do not have an objection to a Conditional Use Permit for this application.

However, I recommend that the City ask the developer of Southport Center to provide a plan as to providing adequate parking if they do not achieve a mix in the nature of tenants for this project.

Submitted by,

THOMPSON, DREESSEN & DORNER, INC.

John M. Kottmann, P.E.

JMK/jlf

cc: File

